

TRANSMITTAL OF APPEAL BRIEF (Small Entity)Docket No.
GGG-10003/29

In Re Application Of: Gochanour

FEB 01 2001

Serial No.
09/110,987Filing Date
July 7, 1998Examiner
G. BaeGroup Art Unit
3724Invention: **PROTECTIVE HAND COVERING AND DISPENSER APPARATUS**TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:
Aug. 29, 2000

Applicant is a small entity under 37 CFR 1.9 and 1.27.

A verified statement of small entity status under 37 CFR 1.27:

- ☐ is enclosed.
- ☒ has already been filed in this application.

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Dated: Jan. 29, 2001

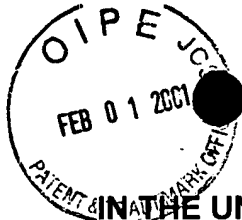
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#12 Appeal Brief

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Gochanour

Serial No.: 09/110,987

Art Unit: 3724

Filed: July 7, 1998

Examiner: G. Bae

For: PROTECTIVE HAND COVERING AND DISPENSER APPARATUS

APPEAL BRIEF UNDER 37 C.F.R. §1.192

Box AF
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This is Appellants' Appeal Brief to the Board of Appeals in response to the final Office Action dated March 29, 2000, and the subsequent Notice of Appeal mailed August 29, 2000.

I. Real Party in Interest

The real party in interest in this case is Gary Gochanour, an independent inventor.

II. Related Appeals and Interferences

There are no related appeals or interferences known to Appellant or Appellant's legal representative affected by, or which might have a bearing, on the Board's decision with respect to this appeal.

III. Status of the Claims

Claims 1-3, 5-10, 13, 14 and 17 are pending in this application. Claims 10, 13 and 14 and 17

were withdrawn from consideration with traverse, leaving claims 1-3 and 5-9. Of these, claims 3, 5, 6 and 8 stand rejected under 35 U.S.C. §112, second paragraph in view of Appellant's use of the term "substantially." Claims 1-2, 5, 6 and 8 stand rejected under 35 U.S.C. §102(b) as being anticipated by Garr, U.S. Patent No. 4,607,774. Claims 3, 7 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

IV. Status of all Amendments Filed Subsequent to Final Rejection

No after-final amendments have been filed.

V. Concise Summary of the Invention

The invention as claimed resides in a dispenser for a thin, flexible protective hand covering film (see Abstract). Figure 5A illustrates a preferred configuration in skeletal form. A roll of flexible adhesive film 51 is installed into a housing 52. The film is drawn from the roll over a platform area 54, terminating in an edge 55 adapted to snag, cut or otherwise sever the film into individual sheets (Specification, page 16, lines 14-23). Once surface of the film is supplied with a preferably low-tack adhesive, and is drawn from the roll with this tacky surface facing outwardly, enabling a user to press the palmer surface of a hand against the film to produce temporary covering (see Figure 2). Figures 6A-6C illustrate the way in which a user would apply a section of the film utilizing the dispensers of Figures 5A-5C. In Figure 6B, having made contact to the sheet of film, the user may detach the sheet using a supplied cutter or other capability, resulting in a detached sheet adhered to the hand, as shown in Figure 6C.

VI. Concise Statement of Issues Presented for Review

- A. Is the rejection under 35 U.S.C. §112, second paragraph, proper, when the term “substantially” is used ubiquitously in claim drafting?
- B. Does Garr, U.S. Patent No. 4,607,774 anticipated claims 1-2, 5, 6 and 8?
- C. Was the restriction requirement proper given that the restricted method claims make direct reference to the apparatus under consideration?

VII. Grouping of Claims for Each Ground of Rejection Which Appellant Contends

For the purposes of this appeal brief, claims 2, 5, 6 and 8 stand or fall with claim 1.

VIII. Argument**A. Is the Rejection Under 35 U.S.C. §112, Second Paragraph, Proper Over Appellant's Use of the Term “Substantially”**

Apart from the fact that this term is widely used in the drafting of patent claims, the authorities have held that “substantially” is definite in view of the general guidelines contained in the specification. (MPEP §2173.05(b)(D).) Accordingly, Appellant respectfully requests that this rejection under §112 be withdrawn.

B. Is Claim 1, and the Claims That Stand or Fall Therewith, Anticipated by U.S. Patent No. 4,607,774 To Garr?

Although two patents to Garr are cited by the Examiner (the ‘774 and ‘201 patents), Appellant assumes, based upon the language of the Examiner, that it is the ‘774 that is being asserted. Although

the Garr reference was not used for the purposes of rejection until the final Office Action, the Examiner states that Appellant's amendment, which was entered only to better define Appellant's invention and not to distinguish over the prior art, "necessitated the new ground(s) of rejection." Appellant traverses this argument as well.

The '774 patent to Garr is drawn from a non-analogous field of endeavor. It is directed to a wrapping table assembly, and pertains generally to the wrapping of objects such as food products ('774 patent, col. 1, lines 1-13). In contrast, Appellant's invention is directed to a dispenser for hand coverings. It is well settled that, to rely on a reference as the basis for rejection, the reference must either be in Appellant's field of endeavor or, if not, must be reasonably pertinent to a particular problem with which the inventor is concerned. In Re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Importantly, differences in structure and function are critical in determining whether a particular reference is analogous or not. In Re Ellis, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA, 1973). In this case, it is clear that the Garr reference is non-analogous both in terms of structure *and function*. Not only is the device directed to a different wrapping application, if it were used for Appellant's purpose, a human hand would need to be placed right on top of "a cutting blade 46" thereby referencing the apparatus of Garr dangerous to Appellant's intended use. Thus, the Garr patent is not within Appellant's field of endeavor, and is clearly not reasonably calculated to solve the same problem facing Appellant, namely, the dispensing of temporary hand coverings.

Even if the Garr reference were held to be analogous, claim 1 of the instant application distinguishes over its teachings. It is well settled that, in order to anticipate, a reference must disclose, either explicitly, or inherently, each and every element of Appellant's application as claimed. . RCA Corp. v. Applied Digital Data Systems, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In

this case, claim 1 includes a limitation of a base member defining an area of at least 40 square inches to permit placement of a human hand thereagainst to be covered by the film. The Garr apparatus does not include this feature. Rather, the Examiner makes reference to a base member (17) of Garr, but this is not the area over which the film is drawn. As shown in Figure 4 of the '774 patent, for example, the film 12 is drawn to the right over cutting blade 46, leaving platform area 17 bare and exposed. Indeed, the film 12 would never be drawn in that direction, because no cutting blade would be available for tearing. Thus, one can only conclude that the "platform area" of Garr is the small area between the opening 19 and cutting blade 46, which does not leave room for a human hand. As discussed above, use of this area by a user according to Appellant's invention would also be dangerous. In summary, since U.S. Patent No. 4,607,774 does not teach each and every element of claim 1, the rejection under 35 U.S.C. §102(b) should be withdrawn as well.

C. Was The Restriction Requirement Proper?

Appellant continues to traverse the restriction requirement. Amended independent method claim 10 was amended to include the step of "providing a dispenser according to claim 1." Nevertheless, the Examiner continues to contend that the method "can be practiced by another materially different apparatus which does not inquire the specific housing of Group I as shown in a newly-submitted Figure 5C ...". How, Appellant asks, can the method claims be practiced "by another materially different apparatus" when direct reference is made to the very claim containing such apparatus? That Figure 5C shows a half-cylindrical support is of no consequence, since independent apparatus claim 1 specifies a base member proportioned to permit placement of the hand to be covered thereagainst, without requiring that the base member be flat. In other words, independent apparatus

claim 1 covers all base members, so long as sufficient area is provided for placement of a hand to be covered thereagainst. For this reason, Appellant continues to traverse the restriction requirement, and respectfully requests that the requirement be withdrawn at this time, and that all pending claims be duly examined.

Conclusion

Based on the foregoing, all rejected claims continue to be in condition for allowance.

Respectfully submitted,

By: 

Dated: Jan. 29, 2001

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APPENDIX - APPEALED CLAIMS

1. A dispenser for a roll of flexible stretchable film to be used as a hand covering, the roll of film defining a central axis, and having first and second surfaces, with the first surface including an applied adhesive, the dispenser comprising:

a housing to receive the roll of film;

an edge operative to separate the film drawn off the roll into individual sheets for use; and

a base member between the roll and the edge over which the film is drawn, with the first surface facing outwardly, and wherein the base member defines an area of at least 40 square inches to permit placement of the palmar surface of an average adult human hand thereagainst to be covered by the flexible, stretchable film.

2. The dispenser of claim 1, further including an aperture through which the film may be pulled and drawn off the roll.

3. The dispenser of claim 1, wherein the flexible film includes spaced-apart perforation regions, and wherein the edge is physically configured to separate the drawn film into individual sheets at the perforation regions.

5. The dispenser of claim 1, wherein the base member is substantially non-resilient.

6. The dispenser of claim 1, wherein the base member is substantially resilient.

7. The dispenser of claim 1, wherein the base member includes a hand-shaped depression oriented toward the film.

8. The dispenser of claim 1, wherein the flexible film is at least partially transparent, enabling a user to visualize the base member therethrough.

9. The dispenser of claim 8, wherein the base member includes hand-positioning visual indicia which a user can visualize through the film.

10. A method of adhering a film to a hand, comprising the steps of:
providing a dispenser according to claim 1;
loading a roll of the flexible film into the housing;
drawing the film over the base member such that the surface with the adhesive is facing outwardly; and
pressing the palmar surface of a hand against the film and base member.

13. The method of claim 11, wherein the dispenser further includes a cutting edge, and wherein the method further includes the step of:
drawing the film adhered to a hand past the film-separation edge; and
applying a force with the hand to sever the film at the cutting edge.

14. The method of claim 10, wherein the film includes spaced-apart perforation regions to

assist in severing the film.

17. The method of claim 10, wherein the base member includes hand-positioning visual indicia, and wherein the method includes the step of visualizing the indicia through the film prior to the step of pressing the palmar surface of a hand against the film and base member.